

1 ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

2
3 In the Matter of Denial of the Certified General
Appraiser License Application of:

No. 17F-13245-BOA

4 **THOMAS OAKLEY**
155 S. Orange Grove Blvd., #B
5 Pasadena, CA 91105

**SUPERINTENDENT'S
FINAL DECISION
AND ORDER**

6 Petitioner.

7 The Superintendent of Financial Institutions ("Superintendent") having reviewed the record
8 in this matter, including the Administrative Law Judge Decision attached and incorporated herein
9 by this reference, adopts the Administrative Law Judge's, Conclusions of Law and Recommended
10 Order as follows:

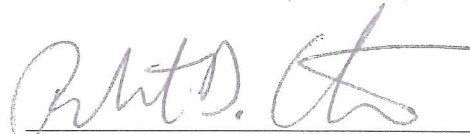
11 **ORDER**

12 **IT IS ORDERED** that the Certified General Appraiser License Application Number AG
13 13245 is denied.

14 **NOTICE**

15 The parties are advised that, pursuant to [A.R.S. § 41-1092.09](#), this Order shall be final
16 unless Petitioner submits a written motion for rehearing no later than thirty (30) days after service
17 of this decision. The motion for rehearing or review must specify the particular grounds upon
18 which it is based as set forth in [A.A.C. R20-4-1219](#). A copy shall be served upon all other parties
19 to the hearing, including the Attorney General, if the Attorney General is not the party filing the
20 claim of error. In the alternative, the parties may seek judicial review of this decision pursuant to
21 [A.R.S. § 41-1092.08\(H\)](#).

22 DATED this 29th Day of June, 2017.

23 

24 Robert D. Charlton
25 Superintendent of Financial Institutions

26 ...

27 ...

28 ...

1 ORIGINAL filed this 29th day of June, 2017 in the office of:

2 Robert Charlton, Superintendent of Financial Institutions
3 Arizona Department of Financial Institutions
4 ATTN: June Beckwith
5 2910 North 44th Street, Suite 310
6 Phoenix, Arizona 85018
7 jbeckwith@azdfi.gov

8 Copy of the foregoing e-filed this
9 28th day of June, 2017 to:

10 Suzanne Marwil, Administrative Law Judge
11 Office of the Administrative Hearings
12 1400 West Washington, Suite 101
13 Phoenix, AZ 85007

14 COPY of the foregoing mailed/emailed this
15 29th day of June, 2017, to:

16 Shane Foster, Assistant Attorney General
17 Office of the Attorney General
18 1275 West Washington
19 Phoenix, AZ 85007

20 Mark Murphy
21 Licensing Manager
22 Arizona Department of Financial Institutions
23 ATTN: Linda Lutz
24 Arizona Department of Financial Institutions
25 2910 N. 44th Street, Suite 310
26 Phoenix, AZ 85018
27 LLutz@azdfi.gov

28 AND COPY MAILED SAME DATE by Certified Mail, Return Receipt Requested, to:

Thomas E. Oakley
155 S. Orange Grove Blvd., #B
Pasadena, CA 91105
TOMOAK12@AOL.COM

By: 

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Denial of the Certified
General Appraiser License Application of:

THOMAS OAKLEY
#AG13245

Petitioner.

No. 17F-13245-BOA

ADMINISTRATIVE LAW JUDGE
DECISION

HEARING: June 21, 2017

APPEARANCES: Thomas Edward Oakley ("Petitioner") appeared on his own behalf; Assistant Attorney General Shane Foster for the Arizona Department of Financial Institutions ("Department"), of which the Board of Appraisal is now a part.

ADMINISTRATIVE LAW JUDGE: Suzanne Marwil

1. On December 27, 2016, the Department received an application for a Certified General Appraiser license ("Application") from Petitioner.
2. Petitioner answered "Yes" to Question 1 of the Application, which asked:
 - 1) Have you ever been charged with, convicted of or pled nolo contendere (no contest) to a criminal offense, other than a minor traffic violation, in this or in any other jurisdiction (i.e., locality)? You must answer "YES" even if you received a pardon, the conviction was set aside, the records were expunged, your civil rights were restored, and whether or not a sentence was imposed or suspended.
3. As part of submitting the Application Petitioner applied for a level one fingerprint clearance card with the Department of Public Safety. See Exhibit 4. The Department of Public Safety reviewed Petitioner's past criminal history and he answered some questions about the same. Ultimately, the Department of Public Safety issued Petitioner his fingerprint clearance, leading him to believe he was on the path to becoming a certified general appraiser in Arizona.
4. Notably, Petitioner testified that the Department of Public Safety did not ask him about his conviction for felony perjury. At hearing, Petitioner explained that his perjury conviction stemmed from his applying for and obtaining a California driver's license

1 under the name Thomas Edward Kingsley after his California drivers' license had been
2 revoked for life following a road rage incident.

3 5. During the Application process, Petitioner gave Deborah Rudd, a Department
4 employee, a copy of an Administrative Law Judge's Decision in California (Exhibit 5)¹
5 that denied Petitioner an Appraiser license in California following the competition of his
6 prison term for perjury. Petitioner's previous appraiser license in California expired
7 while he was in prison. In pertinent part, that Decision concluded as follows:

8 Cause exists to deny Respondent's application for a real estate
9 appraiser license, pursuant to Regulation section 3721, subdivision
10 (a)(2), on the grounds that Respondent committed an act involving
11 dishonesty, fraud, or deceit with the intent to benefit himself by
12 presenting police officers with his fraudulently obtained unrestricted
13 California driver's license while failing to disclose his surname
14 "Oakley," under which he had a suspended driver's license and a
15 prior history of convictions . . .

16 * * *

17 Although Respondent's perjury conviction is fairly remote in time, the
18 dishonesty inherent in his acts leading to that conviction is conduct
19 plainly contrary to the fundamental honesty and truthfulness required
20 of a real estate appraiser. Respondent's act of failing to disclose to
21 police the fact that he had a driver's license another name with a
22 long history of suspensions showed that he was still acting
23 dishonestly years after he had fraudulently obtained the new license.
24 He also used that fraudulently obtained license for years in the
25 course of his work as an appraiser. Respondent's candor and
26 sincere remorse evidence a commendable maturity and seriousness.
27 However, aside from his recent history of not sustaining any further
28 convictions, he provided no other evidence of his rehabilitation under
29 the Bureau's applicable criteria, nor did he provide any evidence
30 from others who could have attested to his character (Legal
Conclusion 7.) As a result, Respondent did not show sufficient
rehabilitation to overcome the multiple causes for denial of licensure
the Bureau sustained.

31 6. On March 24, 2017, the Department denied the Application based on Petitioner's
32 failure to meet the minimum criteria for licensure set forth in A.R.S. § 36-3620(A). The
33 denial letter explained: "Specifically, records indicate that you have been convicted of
34 multiple felonies, including one felony conviction for perjury."

35 ¹ This Decision was adopted by the California Bureau of Real Estate Appraisers.

1 7. After issuance of the denial letter, Petitioner appealed the Department's
2 determination regarding the Application (See Exhibit 3), resulting in hearing being set
3 before the Office of Administrative Hearings.

4 9. Petitioner testified that he had paid his debt to society for his crimes, had his
5 convictions expunged and should be given a chance to prove himself. Petitioner
6 believed that the Department of Public Safety's fingerprint clearance meant his
7 convictions have been looked at and he was approved as an appraiser. He found the
8 Department's belated raising of objections and requests for more information to be very
9 frustrating, particularly because he almost expended significant funds to take classes at
10 the Department's request.

11 10. Mark Murphy, the Department's licensing manager, testified that the purpose of a
12 fingerprint clearance card is to assist the Department in assessing applicants and was
13 not intended to divest the Department of its discretion to determine that applicants who
14 commit felonies may in certain circumstances be denied an Appraiser license. Mr.
15 Murphy stressed that honest and integrity are essential attributes of an appraiser given
16 that consumers and other parties must rely on an appraisers' valuations. Mr. Murphy
17 indicated that the Department had determined that Petitioner should not have a Certified
18 General Appraiser license in view of his felony perjury conviction for many of the same
19 reasons expressed by the California Administrative Law Judge.

20 CONCLUSIONS OF LAW

21 1. A.R.S. § 32-3620 A) provides that "[t]he board may deny the issuance of a
22 license or certificate as a state licensed or state certified appraiser to an applicant who
23 has been convicted of a felony or on any of the grounds prescribed in this chapter."

24 2. A.R.S. § 32-3631(A) provides:

25 The rights of an applicant or holder under a license or certificate as a state
26 licensed or state certified appraiser may be revoked or suspended or the
27 holder of the license or certificate may otherwise be disciplined in
28 accordance with this chapter on any of the grounds set forth in this
29 section. The board may investigate the actions of a state licensed or state
30 certified appraiser and may revoke or suspend the rights of a license or
certificate holder or otherwise discipline a state licensed or state certified
appraiser for any of the following acts or omissions:

* * *

1 5. An act or omission involving dishonesty, fraud or misrepresentation with
2 the intent to substantially benefit the license or certificate holder or another
3 person or with the intent to substantially injure another person.

4 3. Petitioner has the burden of proving by a preponderance of the evidence that the
5 denial of the application should be reversed. See A.R.S. § 41-1092.07(G)(1); and A.A.C.
6 R2-19-119.

7 4. A preponderance of the evidence is "such proof as convinces the trier of fact that
8 the contention is more probably true than not." Morris K. Udall, ARIZONA LAW OF
9 EVIDENCE 5 (1960). It is "evidence which is of greater weight or more convincing than
10 the evidence which is offered in opposition to it; that is, evidence which as a whole
11 shows that the fact sought to be proved is more probable than not." BLACK'S LAW
12 DICTIONARY 1182 (6th ed. 1990).

13 5. The weight of the evidence of record established that Petitioner has been
14 convicted of felonies, including the felony of perjury. In addition, the record showed that
15 Petitioner perjury conviction stemmed from his desire to obtain a driver's license to
16 which he was not legally entitled so that he could drive and work as an appraiser in
17 California.

18 6. The mere fact that the Department of Public Safety issued Petitioner a fingerprint
19 clearance card does not change the analysis or erase the perjury conviction. The
20 Administrative Law Judge concurs with the Department that the fingerprint clearance
21 card is simply a tool to assist the Department in exercising its discretion to decide
22 whether to grant or deny a Certified General Appraiser license. Such a clearance
23 certainly does not and should not replace the Department's discretion, especially where as
24 here, the testimony was that the Department of Public Safety did not even consider the
25 Petitioner's perjury conviction.

26 7. The weight of the evidence of record established that pursuant to A.R.S. §§ 32-
27 3620(A) grounds exist for the Board to deny the Application.

28 8. Petitioner failed to meet his burden of proving by a preponderance of the
29 evidence that he is qualified to hold a Certified General Appraiser license or that the
30 Department's determination to deny the Application should be reversed.

ORDER

Based on the above, the Department's denial of the Application should be affirmed.

Done this day, June 27, 2017.

/s/ Suzanne Marwil
Administrative Law Judge

Transmitted electronically to:

Robert D. Charlton,
Arizona Department of Financial Institutions